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**McFarling Foods, Inc. and Chauffeurs, Teamsters,  
Warehousemen and Helpers Local Union No.  
135. Case 25–RC–10035**

December 5, 2001

**DECISION AND DIRECTION**

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN  
AND WALSH

The National Labor Relations Board has considered determinative challenges in an election held on June 20, 2001, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 29 for and 28 against the Petitioner, with 7 challenged ballots, a sufficient number to affect the election results.

The Board has reviewed the record in light of the exceptions and brief and has adopted the hearing officer's findings and recommendations,<sup>1</sup> only to the extent consistent with this decision.

The parties in this case stipulated to a unit description including, "all full-time and regular part-time production, maintenance and warehouse employees" at the Employer's Indianapolis, Indiana facility, excluding "driver employees, all office clerical employees, all professional employees, and all guards and supervisors as defined in the Act." The Petitioner challenged ballots cast by Calvin "Jack" Finney and Charles Stokes, both of whom work as regular part-time employees in the Employer's warehouse. Finney's ballot was challenged on the basis that he is a retiree working part-time performing office clerical duties. The hearing officer found that Finney regularly performs plant clerical duties integral to the warehouse process. Stokes' ballot was challenged on the basis that he is a statutory supervisor. The hearing officer found no evidence to establish that Stokes possesses or exercises Sec. 2(11) supervisory authority. We agree.

Notwithstanding these findings, the hearing officer recommended sustaining these challenges based on findings that neither employee shared a community of interest with bargaining unit employees. In exceptions, the Employer contends, *inter alia*, that the hearing officer

erred by using a community-of-interest analysis rather than giving effect to the clear intent of the parties' unit stipulation. We find merit to this exception.

"It is well-established that in stipulated unit cases such as the one before us, the Board's function is first to ascertain the parties' expressed intent with regard to the disputed employees and then to determine whether this intent is contrary to any statutory provision or established Board policy." *Hotel Inter-Continental Maui*, 237 NLRB 906, 907 (1978). A determination of voter eligibility based on community-of-interest principles is appropriate only if the parties' intent is unclear and the stipulated unit is ambiguous. E.g., *Space Mark*, 325 NLRB 1140, 1140 fn. 1 (1998).

Here, however, we have no difficulty in determining the parties' intent. As stated, the stipulated unit included *all* regular part-time warehouse employees, with the exception only of individuals in specifically excluded job classifications (drivers, office clericals, professionals, guards, and supervisors). The stipulation makes no further distinction based on the kind of work performed by an employee in the Employer's warehouse. It is therefore irrelevant that no other warehouse employee seems to perform the same tasks as Finney and Stokes. Both of them work as regular part-time employees in the warehouse, and there is no showing that their jobs fall within any of the classifications specifically excluded from the unit by the stipulation agreement. We therefore find that the parties intended to include Finney and Stokes in the stipulated unit.

Furthermore, the record fails to show that either Finney and Stokes enjoy any special status with the Employer that would, as a matter of statutory policy, require their exclusion from the unit in spite of the parties' stipulation. As the stipulation agreement does not contravene any statutory provision or Board policy, we find, contrary to the hearing officer, that the challenges to the ballots cast by Finney and Stokes should be overruled. We shall include their ballots among those remanded to the Regional Director with directions to open and count the additional ballots and to issue a revised tally of ballots, with the appropriate certification.

<sup>1</sup> In the absence of exceptions, we adopt, *pro forma*, the hearing officer's recommendations to sustain the challenge to the ballot of Craig Hammer, and to overrule the challenges to the ballots of Dwayne Hicks, Jonathan Wilson, and James Rider.

## DIRECTION

It is directed that the Regional Director for Region 25 shall, within 14 days from the date of this Decision and Direction, open and count the ballots of Calvin "Jack" Finney, Dwayne Hicks, James Rider, Charles Stokes, and Jonathan Wilson. The Regional Director shall then serve on the parties a revised tally of ballots and issue the appropriate certification.

Dated, Washington, D.C. December 5, 2001

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Peter J. Hurtgen, Chairman

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Wilma B. Liebman, Member

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Dennis P. Walsh, Member

(SEAL)

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